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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,432	10/16/2003	Philip D. Bourgeois	18112 USA	2220
21127	7590	02/02/2006	EXAMINER	
KUDIRKA & JOBSE, LLP ONE STATE STREET SUITE 800 BOSTON, MA 02109			MCDOWELL, SUZANNE E	
			ART UNIT	PAPER NUMBER
			1732	

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/688,432	BOURGEOIS, PHILIP D.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Suzanne E. McDowell	1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) 1-24, 33-40 and 49-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-32, 41-48 and 57-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/22/05; 3/22/05; 10/16/03</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of claims 25-32, 41-48 and 57-61 in the reply filed on 11/02/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 1-24, 33-40 and 49-56 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/02/05.

### *Claim Rejections - 35 USC § 112*

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 57-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 57 recites the limitation "said sidewall" in lines 2-3; and claim 59 recites the limitation "said wall" in line 1. There is insufficient antecedent basis for these limitations in the claims.

### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:  
  
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
6. Claims 25-32, 41-48 and 57-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over McHenry et al. (US Patent 4,526,821) in view of Liu et al. (US Patent 5,248,364). McHenry et al. teaches a method of making a multilayered container by mixing an adhesion promoter to the resin used to form the barrier layer, or to the resin used to form surface layers, or to both (column 7, lines 1-3). McHenry et al.

Art Unit: 1732

teaches that the barrier resin can be EVOH and the surface layer-forming resin can be a polyethylene/polypropylene mix (column 6, lines 59-63), or polyethylene, polypropylene, or ethylene vinyl acetate (column 7, lines 10-15). Regarding claims 25 and 41, McHenry et al. does not teach that the adhesion promoter is an amine or an alkylene amine. Regarding claims 26, 43 and 57, McHenry et al. does not teach that the adhesion promoter is an alkylene imine. Regarding claims 30, 44 and 61, McHenry et al. does not teach that the adhesion promoter is a polyethyleneimine. Liu et al. teaches using polyethyleneimine as an adhesive for materials such as nylon and polyolefin, in forming a multilayered laminate (column 2, lines 52-63). It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the adhesion promoter taught by Liu et al. to modify the method taught by McHenry et al., depending upon material characteristics, cost, availability, etc. The motivation to use Liu et al. to modify McHenry et al. is that both solve the same problem, that of adhering layers together in a multilayered product.

Regarding claims 25, 31, 46, 47, and 60, McHenry et al. does not teach that the surface layer forming resin is polyester, such as polyethylene terephthalate or PEN. It is generally well known in the art to use polyester resin, such as polyethylene terephthalate or PEN, to form containers. It would have been obvious to a person of ordinary skill in the art at the time of the invention to use generally well known resin, such as polyethylene terephthalate or PEN, to modify the method taught by McHenry et al., depending upon the desired characteristics of the finished article, such as cost, durability, recyclability, haze, etc.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re*

Art Unit: 1732

Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 25-32, 41-48 and 57-61 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims of copending Application No. 10/388,616 in view of Liu et al. (US Patent 5,248,364). 10/388,616 teaches the generally claimed method of mixing an adhesion promoter with a barrier resin. Regarding claims 25 and 41, 10/388,616 does not teach that the adhesion promoter is an amine or an alkylene amine. Regarding claims 26, 43 and 57, 10/388,616 does not teach that the adhesion promoter is an alkylene imine. Regarding claims 30, 44 and 61, 10/388,616 does not teach that the adhesion promoter is a polyethyleneimine. Liu et al. teaches using polyethyleneimine as an adhesive for materials such as nylon and polyolefin, in forming a multilayered laminate (column 2, lines 52-63). It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the adhesion promoter taught by Liu et al. to modify the method taught by 10/388,616, depending upon material characteristics, cost, availability, etc. The motivation to use Liu et al. to modify 10/388,616 is that both solve the same problem, that of adhering layers together in a multilayered product.

This is a provisional obviousness-type double patenting rejection.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Curie (US Patent 6,667,013).

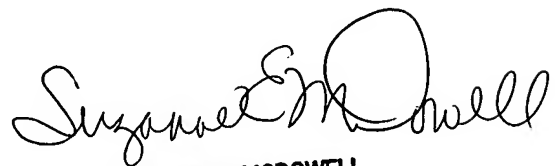
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzanne E. McDowell whose telephone number is (571) 272-1205. The examiner can normally be reached on 6:30 -10:30am M, 6:30am-7pm T & F.

Art Unit: 1732

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEM  
January 23, 2006

  
SUZANNE E. MCDOWELL  
PRIMARY EXAMINER  
1/23/06